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October 18, 1999

BY HAND

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Rulemaking Proceeding—Regulatory Reform Rules regarding Interexchange
Carriers—Rules 1220-4-2-.55(2) (“IXC Rules”)*
Docket No. 98-00097

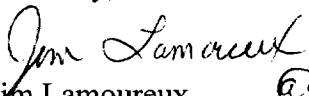
Dear Mr. Waddell:

Enclosed for filing in this proceeding please find the following:

- Comments of AT&T Communications of the South Central States, Inc., which includes, as Exhibit 1, AT&T's proposed revision to Rule 1220-4-2-.55(2) consistent with T.C.A. §65-5-208(b);
- AT&T's Supplemental Submission of Supporting Material; and
- Affidavit of Joseph Gillan.

These materials further set forth and support AT&T's position that the long distance market in Tennessee is competitive, that such competition is an effective price regulator, and that T.C.A. § 65-5-2-8(b) and the public interest, therefore, require the elimination of price regulation of interexchange carriers in Tennessee.

Sincerely,


Jim Lamoureux

Encls.

cc: Vance Broemel, Esq.
Susan Berlin, Esq.
James Wright, Esq.

FILE

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: *Rulemaking Proceeding – Regulatory Reform Rules
 regarding Interexchange Carriers – Rules 1220-4-2-.55(2)***

Docket No. 98-00097

**COMMENTS OF AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC.**

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October 18, 1999

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: *Rulemaking Proceeding – Regulatory Reform Rules
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Docket No. 98-00097

COMMENTS OF AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC.

AT&T Communications of the South Central States, Inc. ("AT&T") files these comments with respect to the proposed revision of Rule 1220-4-2-.55(2), the regulatory reform rules governing interexchange carriers (the "IXC Rules"). This proceeding began with the filing of the joint petition of AT&T and other interexchange carriers subject to the existing Rule 1220-4-2-.55(2) governing interexchange carriers ("IXCs"), seeking the revision of that rule, submitting a proposed revision and setting forth the basis for that proposed revision.

On August 15, 1999, the TRA published a Notice of Rulemaking in the Tennessee Administrative Register, including a proposed revision of the IXC Rules, which revision differed substantially from the revision proposed by AT&T and the other petitioners.

A Rulemaking Hearing was set in the Notice for September 16, 1999, and was held before David Waddell, the Executive Secretary of the TRA and other members of

the staff of the TRA. At that hearing, the deadline for filing comments as to the proposed rules was set for October 18, 1999. The key provisions of the proposed rules as set forth in the Notice of Rulemaking define and distinguish "residential services" from all other services, and provide that "residential services" will be subject to price cap regulation. In these comments, AT&T will demonstrate that the imposition of such price cap regulation is contrary to the mandate of the last sentence of T.C.A. §65-5-208(b), providing:

The authority shall in any event exempt a telecommunications service for which existing and potential competition is an effective regulator of the price of those services.

AT&T will also submit herewith, as Exhibit 1, a version of the IXC Rules that meets the requirements of the governing statute. MCI WorldCom and Sprint support the proposed Rules as filed by AT&T in Exhibit 1.

THE IMPOSITION OF PRICE CAP REGULATION FOR THE RESIDENTIAL SERVICES OF IXCs WOULD BE CONTRARY TO THE STATUTORY STANDARD STATED IN T.C.A. §65-5-208(b).

A. THE STATUTORY STANDARD

1. Exemption Is Mandatory Where Competition Is An Effective Regulator Of Prices.

T.C.A. §65-5-208(b) provides:

The authority, after notice and opportunity for hearing, may find that the public interest and the policies set forth herein are served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the authority may exempt telecommunications service providers from such requirements as appropriate. The authority shall in any event exempt a telecommunications service for which

existing and potential competition is an effective regulator of the price of those services.

Thus, on finding that the public interest and the policies set forth in the statute (see Declaration of Policy, T.C.A. §65-4-123) will be served by exempting a service or group of services from all or a portion of the rate fixing provisions of the statute, the TRA has the discretion to exempt providers of such services as it deems appropriate. Where, however, existing and potential competition is an effective regulator of prices, the TRA must, in any event, order the exemption of those services without reference to any other factors.

The use of the word “shall” in a constitutional provision or a statute indicates an intent that what follows is mandatory or imperative and not discretionary; *see*, e.g., Stubbs v. State, 216 Tenn. 567, 393 S.W.2d 150 (1965); Biggs v. Beeler, 180 Tenn. 198, 173 S.W.2d 946 (1943); and Rounds v. State, 171 Tenn. 511, 106 S.W.2d 282 (1937). The mandatory intent here is particularly clear in the context of the discretion granted in the preceding sentences of this subsection and in view of the use of the phrase “in any event.”

The last sentence of §65-5-208(b) is analogous to the statute before the Court in Louisville & Nashville Railroad v. Hammer, 191 Tenn. 700, 236 S.W.2d 971 (1951), which statute provided that the Railroad and Public Utilities Commission “shall” authorize the discontinuance of any passenger train when for a period of 12 months or more the direct operating costs of such train exceed the aggregate gross revenues therefrom by more than 30%. The Supreme Court held that where the proof showed that the direct operating costs exceeded the aggregate gross revenues

as provided in the statute, the Commission had no discretion, could not consider other factors, and was compelled to authorize discontinuance.

Likewise, under the last sentence of T.C.A. §65-5-208(b), where the proof shows that existing and potential competition is an effective regulator of the rates of any service or group of services, the TRA has no discretion, cannot consider other factors, but must “in any event” grant the exemption.

2. Competition, Not Regulation, Is Favored.

There is no assumption, much less presumption, that regulation is the norm and competition the exception. To the contrary, the statutory declaration of policy, T.C.A. §65-4-123, makes clear that “The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers.” Indeed, as the Court stated in United States v. American Tel. & Tel. Co., 552 F.Supp. 131 (D.C. 1982), at pages 149-150 (the Divestiture case):

Competition has not been endorsed by the Congress and the courts as a purely academic matter. The need to safeguard free competition is a direct result of the fundamental premise of our economic system that

unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the

preservation of our democratic political and social institutions.

Northern Pacific Railway Co. v. United States, supra, 356 U.S. at 4, 78 S.Ct. at 517, See also *National Society of Professional Engineers v. United States*, supra, 435 U.S. at 6905, 98 S.Ct. at 1367. (Footnote omitted)

Where competition is present and provides an effective regulation of prices or rates,¹ there is no need or occasion for the setting of prices or rates by regulatory processes. Regulatory processes are at best an imperfect substitute for competition.

3. When Is Competition An Effective Regulator Of Prices?

The determinative question under the statutory standard, stated in the last sentence of T.C.A. §65-5-208(b), is whether existing and potential competition is an effective regulator of the prices of the subject services.

The concept of competition as an effective regulator of prices is one of practical economics expressed and developed in the antitrust cases as a prescription for consumer welfare; see, e.g., Reiter v. Sonotone Corp., 442 U.S. 330, 343, 99 S.Ct. 2326, 2333, 60 L.Ed.2d 931 (1979). Competition functions by driving prices to incremental costs and in so doing has the effect of allocating economic resources to their most efficient use; see, e.g., Rebel Oil Co., Inc. v. Atlantic Richfield Co., 51 F.3d 1421, 1433 (9th Cir. 1995) and cases there cited. Generally, the competitive functioning of a market may be frustrated by a market participant that has sufficient market power to raise prices without suffering any significant loss in

¹ "Prices" and "rates" are used interchangeably in the Tennessee statutes and in the TRA Rules.

sales, or by governmental regulation that sets prices so as to defeat the efficient allocation of resources or that creates or perpetuates effective barriers to entry into the market. Thus, in considering whether competition is an effective regulator of prices in a market, a key factor is whether any firm in that market has market power. Another key factor is determining the effect of existing regulation on the potential development of competition.

Both the practical economic concepts and the cases dealing with competition in the antitrust context present a clear and well-settled picture of how competition functions and when competition is an effective regulator of prices, including the basic steps to be taken in analysis. For example, for a detailed treatment of market power, see, Landes & Posner, *Market Power In AntiTrust Cases*, 94 Harv.L.Rev., 937 (1981); IIA Areeda, Hovenkam & Solow, *Anti Trust Laws* (1995) §501 *et seq.* The relevant concepts are explained in the context of long-distance rate regulation in *Kasserman & Mayo, Competition and Asymmetric Regulation In Long-Distance Telecommunications: An Assessment of the Evidence*, 4 *CommLaw Conspectus* 1 (1996), Tab 4 of AT&T's Submission of Supporting Material; Affidavit of Thomas Randolph Beard; and statement of Richard Cabe on behalf of MCI WorldCom. For an example of the application of the relevant economic concepts to long-distance regulation, see decision of FCC, *In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier*, released October 23, 1995, Tab 7 of AT&T's Submission of Supporting Material.

Effective competition requires that prices be set by the market rather than pursuant to regulatory social policies. Under the statutory standard of effective competition, the implementation of social policies is not a proper function for consideration. The standard is by its terms exclusive and only that standard is to be considered. Indeed, the implementation of social policy in what would otherwise be a competitive market will inevitably skew that market and may function as a barrier to entry and a barrier to the full development of competition. In driving prices to incremental costs where prices have been set on the basis of regulatory social policies, the general level of prices will decline, although prices for some particular service may rise to incremental costs and some may fall to incremental costs depending on the level set under the regulatory scheme.

Thus, a practical, economic analysis of the effectiveness of existing and potential competition as an effective regulator of IXC prices in the context of the proposed IXC rules requires following the well established pattern of analysis: (i) a definition of the relevant geographic and product market; (ii) an assessment as to whether AT&T, or the facilities based IXCs as a group acting jointly, possess market power; and (iii) an assessment of the effect on competition of the price cap regulation set forth in the proposed rules.

B. DEFINING THE RELEVANT GEOGRAPHIC AND PRODUCT MARKET.

1. The New Economic Reality

To define a market is to identify producers that provide customers of a firm or firms with alternative services for that firm's, or those firms', products or

services. A properly defined market excludes other potential suppliers whose product is too different (the product dimension of the market) or too far away (the geographic dimension of the market), and who are not likely to shift promptly to offer a suitable alternative. A market, thus, is the arena within which significant substitution in consumption or production occurs; *IIA Areeda, Hovenkam & Solow, Anti Trust Laws* (1995) §530a. Thus, a market should be defined in terms of economic reality.

The proposed rules are based on assumptions as to concepts of the relevant market that may have been appropriate five to ten years ago, but no longer reflect economic reality. Thus, the proposed rules in effect (i) confine the relevant market to Tennessee intrastate interLATA services; (ii) exclude “resellers,” and (iii) treat “residential” services as separate from all others. None of these categories reflect economic reality.

To be sure the TRA’s regulatory jurisdiction extends only to Tennessee intrastate commerce; and IXCs providing interLATA services and resellers are separate categories under current rules; but those factors do not reflect current competitive market conditions and practices. The Federal Telecommunications Act of 1996, and technological and marketing developments have brought into existence a new economic reality with respect to telecommunications markets. Any determination of the effectiveness of competition as an effective regulator of rates must be based on that new economic reality, on existing and potential competition today, including the fact that telecommunications is a rapidly changing industry.

2. The New National Telecommunications Market

The nature of the new national telecommunications market is reflected in: (a) the development of a national wholesale market for fiber optic cable capacity; (b) the national advertising of telecommunications services directed to consumers of those services; (c) the development of dial around services; (d) the development of prepaid calling cards; (e) the development of marketing arrangements between carriers and various categories of organizations; (f) the development of national services for the comparison of calling plans of telecommunications carriers; and (g) the opinion of economists.

(a) The Development of a National Wholesale Market for Fiber Optic Capacity.

As a matter of economic reality, a basic distinction in today's telecommunications industry is between the provision of wholesale and retail services. A number of telecommunications providers now focus on providing wholesale services.² The national wholesale market for fiber optic capacity is itself intensely competitive, and the presence of such competition acts as an effective regulator of the prices of such wholesale services.

Since the passage of the Federal Telecommunications Act of 1996, there has been a dramatic increase in the number and extent of fiber optic networks. MCI WorldCom and Sprint have been aggressively expanding and upgrading their networks, focusing on providing wholesale services to providers of retail services,

² The TRA's present regulatory system does not reflect the presence of the wholesale/retail distinction.

including switchless resellers. New national networks have been and are being developed by Williams Communications, Qwest Communications, IXC Communications, Frontier Corp., Cable & Wireless, and Level3 Communications, all of which have, or are developing, extensive routes in Tennessee.³ These networks are specifically designed to provide wholesale services. For example, Williams has a national network consisting of 22,400 route miles, including routes from Memphis, through Nashville, Knoxville and Johnson City to the Virginia border, and from the Kentucky State line through Nashville to Chattanooga. Typically, a minimum of 96 fibers is installed with multiple conduits for additional fiber in most cases, leaving open such conduits for future needs. Williams is wholesale only, offering a full range of broadband and other products.

Qwest has recently completed an 18,500 mile national network, including a route between the Kentucky State line through Nashville to Chattanooga and a route between Memphis and Chattanooga. Qwest also has open conduits available and offers dark fiber. Qwest functions both in the wholesale and retail markets. Qwest in conjunction with BellSouth Telecommunications, Inc. has recently been awarded a contract by the State of Tennessee to provide an extensive network of services to State agencies, the interLATA portion of which will be provided by Qwest.

IXC Communications plans to have its national network of approximately 20,000 miles completed by the end of 1999. It is one of the fastest growing

³ Information concerning these companies is taken from their respective Web sites, copies of which are found in Tab 7 of AT&T's Supplemental Submission of Supporting Material.

wholesale providers. It has a route between the Kentucky State line through Nashville to Chattanooga.

Level3 is building the first international communications network using Internet protocol technology, including a new type switch developed by Lucent. Its network will include a 16,000 mile inter city network in this Country, including routes between the Kentucky State line and Nashville, between Nashville and Memphis and between Nashville and Chattanooga. Its network will include installation of 10-12 conduits, only one of which will initially have fiber, the others being available for future needs.

Frontier and Cable & Wireless, also have extensive networks providing wholesale services.

Use of wholesale facilities may be acquired by contracts or leases for capacity, i.e., without designation of specific fiber; by contracts for infeasible rights of use, designating specific fiber; or by contracts for the use of conduit, whereby the owner of the conduit transfers the right to install fiber therein.

A carrier, whether it be a reseller, an IXC, an electric utility or a CLEC, or even some LEC, may bundle and market services as it wills using the wholesalers facilities for some part or all of its purposes. The prices paid by the carrier for the wholesale services or facilities are determined by the competitive forces in the national wholesale market. Those prices in turn bear upon the prices charged in the retail markets.

(b) The National Advertising of Telecommunications Services directed to Consumers of those Services.

AT&T's Submission of Supporting Material, at Tab 2, includes (i) copies of television and other advertisements for various dial around services; (ii) copies of advertisements and other materials concerning 1+ services; (iii) copies of advertisements and other materials concerning prepaid calling cards; and (iv) copies of advertisements and other materials concerning call back and web based services. Additional materials providing further evidence of such national advertising are included in AT&T's Supplemental Submission of Supporting Material filed on October 15, 1999.

These various offerings have a wide range of prices and calling patterns, all emphasizing substantial savings and diversity in long distance options for Tennessee consumers.

These materials show that all long distance providers – not just AT&T, MCI WorldCom and Sprint – are engaged in a fierce competitive battle – often described as a price or rate war. See the copies of the numerous news stories from papers across Tennessee and around the country from August 1999 in Tab 3 of AT&T's Submission and Tab 2 of its Supplemental Submission. For example, *The Memphis Commercial Appeal* for August 10, 1999 headlined “Lowly Nickel Fuels War for Long-Distance Customers,” including a chart headed “Long-Distance War” showing the recent price plan of MCI WorldCom, Sprint and AT&T; and the

Murfreesboro Daily News Journal on August 31, 1999 headlined “AT&T Cuts Long Distance Rates In Response To Price War.”

The materials in AT&T's Submissions show that competitive calling plans offer long distance service for as little as \$.05 (five cents) per minute for varying monthly subscription fees or minimum usage charges. There are several plans that have no monthly fees at all. Indeed, there are even services that offer free long distance calling if consumers listen to pre-recorded advertisements. See Broadpoint Communications' Web site in Tab 1 of AT&T's Supplemental Submission. There are “callback providers” such as United World Telecom that promise savings of up to 85%, with no monthly minimum; see United World Telecom offering in Tab 1 of AT&T's Supplemental Submission. Consumers, including low volume consumers, can shop the offerings of these carriers to determine which calling plan best fits their needs.

As these materials indicate, every medium of modern advertisements is used to reach consumers with respect to these services.

(c) The Development of National Dial Around Services

A significant development in the national telecommunications market in recent years has been the development and marketing of dial around services. For example, Telecom USA advertises its “10-10-220” service, “Anywhere in the United States” on CBS Morning News, on ABC's Sunset Beach, on ABC's All My Children, on NBC's Days of Our Lives, and in various print media. Clear Choice

Communications sent a direct mail advertisement to Tennessee “local telephone customers” for its “10-10-636” service, 5 cents a minute rate “on all your U.S. Long Distance Calls.” Vortec Telecom, Inc. advertises its “10-10-811” service emphasizing in state calling and no monthly fee. Net Phone advertises its prepaid calling card at 7.9 cents a minute and 30 minutes free “Anywhere in America from any place in America, 24 hours a day, 7 days a week.” Even AT&T and MCI offer their own dial around services. All these services provide a means for customers to obtain low prices from other than a pre-subscribed carrier, and to switch carriers without paying a fee to switch. These services have become a significant factor in providing long distance services throughout the country, including particularly low cost services to low volume users; see Affidavit Joseph Gillan, ¶¶13-15. These services are described in the material in Tab 2 of AT&T’s Submission and in Tab 5 of its Supplemental Submission.

(d) Prepaid Calling Cards

The development of prepaid calling cards has also been a significant factor in bringing competition to the national telecommunications market. For example Call U.S.A. offers a prepaid calling card, advertising 2.8 cents “Call anywhere in the World.” AT&T, MCI WorldCom and Sprint also offer prepaid calling cards. There are a wide variety of such cards, offered by a wide variety of companies, with a wide variety of rates and conditions, sold at drug stores, filling stations, convenience stores, retail and discount stores of all types, etc., providing

ordinary Tennesseans with a wide variety of options other than the calling plans of AT&T or other IXC's. Prepaid card offerings are found in Tab 2 of AT&T's Submission. See also the offering of Deskphone.Com which provides prepaid calling without the use of cards, Tab 1 of AT&T's Supplemental Submission.

(e) Marketing Arrangements with Organizations

A wide variety of new marketing strategies have been developed on a national scale which are often reflected in national advertising or direct mail. Telecommunications providers have entered arrangements with airlines, credit card companies, hotels, all sorts of organizations, whereby special benefits for using a particular service offered by a particular carrier are provided. In effect such arrangements trade on reciprocal brand recognition and loyalty on a national basis.

For example, Working Assets Long Distance offers a variety of calling plans, with different charges for different calling patterns, plus a free pint of Ben & Jerry's Ice Cream or other frozen dessert every month for a year, plus a contribution of 1% of charges to "progressive non-profits working for peace, human rights, equality, education and the environment." A copy of a direct mailing from Working Assets Long Distance and the Company's Web site is attached as Exhibit 2. Note also that Working Assets is listed in the Directory of Loretto Telephone Company as one of the "interexchange carriers serving Loretto Telephone Company."

(f) National Services for comparing Telecommunications Services and Calling Plans

In addition to the extensive coverage given telecommunications services and the comparisons of calling plans and prices in newspapers and popular magazines, there are web sites which provide details of various competing long distance plans and provide summaries indicating the wide variety of sources, calling plans, and rates available. There are even sites which review available calling plans and calculate the best rates for particular customers. As these comparisons reflect, State regulation in a few states limits the range and availability of choices in those states. However, the number, scope and variety of the sources, calling plans and rates clearly reflect the existence of a single, national market for long distance telecommunications services. See the rate comparisons following Tab 9 of AT&T's Submission of Supporting Material, and following Tab 5 of AT&T's Supplemental Submission.

(g) The Opinion of Economists

The testimony of the economists and the economic authorities supports the conclusion that, as a matter of economic reality, determinations as to the effectiveness of competition as a regulator of prices or rates must be made on the basis of defining the market for long distance services as a single national market. See Affidavit of Thomas Randolph Beard, pp. 4-10, which explains in detail the basis for his conclusion that there is a national market for the provision of interLATA toll services; and see Kasserman & Mayo, *Competition and Asymmetric*

Regulation in Long-Distance Telecommunications: and Assessment of the Evidence 4
CommLaw Conspectus 1, 3 (1996), Tab 4 in AT&T's Submission of Supporting Material.

The facts are that: (i) interLATA telecommunications services are offered nationally; (ii) there is no distinction in the facilities used to provide those services between interstate or intrastate; (iii) there is nothing distinctive about the needs or interest of consumers of Tennessee intrastate services, typically they use both interstate and intrastate services; and (iv) the same companies provide both intrastate and interstate services and compete for both. Providers of interstate telecommunications services freely move into available intrastate markets. Except for regulatory jurisdictional limitations, there is no relevant factual distinction.

3. No Basis Exists For Confining The Market Analysis To Tennessee Intrastate InterLATA Services.

As the foregoing analysis demonstrates, there is a national market for interLATA long distance services. As a matter of economic reality, there is no basis for confining analysis of the relevant market to Tennessee intrastate services.

Indeed, as pointed out in the statement of Richard Cabe, at page 5, 81% of the interLATA telecommunications service affecting Tennessee consumers is interstate. No firm is going to go into business to serve only Tennessee intrastate interLATA customers. Jurisdictional boundaries do not determine economic realities.

4. No Basis Exists For Confining The Market Analysis To “Facilities Based Carriers.”

The facts demonstrating the presence of a national market for interLATA telecommunications services also demonstrate that there is no separate market for facilities based carriers and resellers.⁴ The advertising materials submitted by AT&T demonstrate that AT&T, MCI WorldCom and Sprint compete with a host of resellers in the same arena, for the same services, to the same customers. Indeed, resellers are often price leaders in the ongoing price war which characterizes the current long distance market – as can readily be seen by reviewing the advertisements and the rate comparisons submitted by AT&T. In determining the effectiveness of competition as a regulator of rates, resellers must be considered as competing in the same market as the facilities based carriers. The fact that resellers are treated in the market as competitors of the IXC's is further demonstrated by the lists of long distance carriers provided in the telephone directories of Loretto Telephone Company and West Tennessee Telephone Company found in Tab 8 of AT&T's Supplemental Submission.

5. No Basis Exists For Separating Business And Residential Markets For The Purpose Of Determining The Effectiveness Of Competition As A Regulator of Prices.

The concept of the distinction between business and residential markets is largely derived from the historic practice in telephone rate regulation of keeping

⁴ “Facilities based” is not defined in the TRA's Rules. The distinction between facilities based carriers and resellers is based on an obsolete concept, as the foregoing discussion of wholesale providers shows.

business rates high in order to subsidize residential rates. The plain fact is that such a subsidy does not and cannot exist in the long distance market. There is no question but that long distance services for both business and residential customers are highly competitive. Providers can freely move from one service to the other. The advertisements in Tab 2 of AT&T's submission clearly demonstrate the presence of such competition and the fact that such competition is an effective regulator of long distance prices. There is no basis for assuming that there is some high profit margin in long distance business services to provide a subsidy for residential rates.

In this regard it should be noted that long distance services are not included within the scope of universal service as defined in T.C.A. §65-5-207. Long distance providers are not entitled to universal service support. Indeed, the difference in treatment under universal service demonstrates the fundamental distinction between the competitive long distance market and the monopoly derived local exchange market.

Thus, the assumption in the proposed rules that residential and long distance markets are separate is unjustified. That separate treatment has no basis in economic reality. Existing and potential competition is an effective regulator of all long distance prices. For the purpose of defining the relevant market, there is a single market for long distance service.

C. NO CARRIER, OR GROUP OF CARRIERS ACTING JOINTLY, HAS “MARKET POWER” IN THE LONG DISTANCE MARKET.

The FCC’s decision to reclassify AT&T as a non-dominant carrier, *In the Matter of Motion of AT&T Corp to be Reclassified as a Non-Dominant Carrier*, released October 23, 1995, Tab 7 in AT&T’s Submission of Supporting Materials, is a classic demonstration of the relevant economic principles in determining “market power.” The key issue before the FCC was whether AT&T had such “market power” as to justify continuing to classify it as a dominant carrier. As a dominant carrier, AT&T was subject to price cap regulation. A principal effect of reclassifying AT&T as non-dominant was to free AT&T from price cap regulation. In its analysis, the FCC first defined the relevant product and geographic market and the standard for assessing market power, ¶¶19-34. The FCC then considered the basic test for determining market power within the relevant market; supply elasticity, ¶¶57-62; demand elasticity ¶¶63-66; market share ¶¶67-72; and AT&T’s cost structure, size and resources, ¶73. On the basis of its detailed analysis, the FCC concluded that AT&T lacked “market power” and, therefore, should be classified as non-dominant and no longer be subject to price cap regulation.⁵

AT&T has far less “market power” today than it had in 1995 when the FCC’s Order was entered. Considering each of the four relevant factors in determining market power:

⁵ There is a direct relationship between classification as “non dominant” and the presence of competition as an effective regulator of prices. Classification of AT&T as “dominant” was based on a finding of market power. If AT&T had market power then competition was not an effective regulator of prices. When AT&T no longer had market power, competition was an effective regulator of prices.

1. Supply Elasticity.

As the FCC stated, there are two factors that determine supply elasticity; (i) the supply capacity of existing competitors; and (ii) low entry barriers. The supply capacity of existing competitors has increased greatly since 1995. In fact, the passage of the Federal Telecommunications Act of 1996, technological developments and the ability of new competitors to raise enormous amounts of capital have spurred a boom in the supply capacity of AT&T's competitors. Not only have MCI WorldCom and Sprint added to their capacity, numerous new entrants have added capacity. Indeed, one of the most significant developments in the telecommunications industry since the passage of the Federal Telecommunications Act of 1996 has been the enormous increase in network capacity and the development of a new category of wholesale providers. As discussed above, Williams, Qwest, IXC and Level3 have developed extensive new national fiber optic networks, including Tennessee. See the maps showing the scope of their networks and other materials describing those networks in Tab 7 of AT&T's Supplemental Submission of Supporting Material. Frontier and Cable & Wireless also have extensive fiber optic networks. These new networks are characteristically designed for even further expansions of capacity. For example, as Level3's Web site shows it will have 10 to 12 empty conduits available.

There has been, as well, a marked increase in the number and nature of the providers of long distance services, as the materials submitted by AT&T show. Nor has that expansion been confined to urban areas. For example, the telephone

directory of Loretto Telephone Company lists approximately 50 "Long Distance Companies who can provide service to our Customers." West Tennessee Telephone Company's Telephone Directory lists 27 providers of long distance services available to its customers. The Century Telephone Companies, United Telephone Company and Ardmore Telephone Company have their own affiliates offering long distance services in their service areas. The United Telephone Company, for example, bases its advertising on having lower rates than AT&T. Copies of relevant pages from the Directories of Tennessee Independent LECs are included at Tab 8 of AT&T's Supplemental Submission of Supporting Material.

There are now no significant barriers to entry. Instead, many of the companies whose offerings are reflected in AT&T's Submissions were not in existence in 1995.

Clearly, there has been no decrease, but rather a substantial increase, in the supply capacity, and in the number, of competitors since 1995.

2. Demand Elasticity.

The FCC found that residential customers were highly demand elastic on the basis of the fact that as many as 20% of AT&T's residential customers changed interexchange carriers at least once a year. As stated in the original petition filed in this matter, information available at the national level showed that in 1996, approximately 30 million consumers changed their pre-subscribed IXC, representing a significant increase from 1992 when approximately 16 million consumers switched their long distance carrier. In 1996 in Tennessee, nearly 60%

of AT&T's customers either connected to or disconnected from AT&T. In addition, dial around services and prepaid calling cards allow customers to make calls other than through a pre-subscribed carrier. The current rate war in the long distance market has intensified the pressures to change carriers; see the numerous news stories in Tab 3 of AT&T's Submission and Tab 2 of its Supplemental Submission.

The FCC concluded, *In The Matter of Policy and Rules Concerning The Interstate, Interexchange Marketplace*, 11 FCC Rec. 20730 (1996) at FCC 96-424, ¶21:

We conclude, consistent with the AT&T Reclassification Order, that the high churn rate among consumers of interstate, domestic, interexchange services indicates that consumers find the services provided by interexchange carriers to be close substitutes and that consumers are likely to switch carriers in order to obtain lower prices or more favorable terms and conditions.

The current price war has resulted in unprecedented increases in call volume for AT&T, MCI WorldCom and Sprint; see *The Wall Street Journal* September 7, 1999, Tab 3 of AT&T's Submission. Such increases further reflect both Demand Elasticity and the effectiveness of competition.

Discount plans, promotions, advertising expenditures and varying service offerings were found by the FCC to indicate that business customers were highly demand elastic. Certainly, nothing has happened since 1995 to change that conclusion. On the contrary, there has been an obvious increase in demand elasticity for business customers.

3. Market Share.

The FCC found that from 1984 to 1994, AT&T's market shares, in terms of both revenue and minutes, fell from approximately 90% to 55.2% and 58.6% in terms of revenue and minutes respectively. The FCC concluded that this decline in market shares showed that AT&T no longer possessed market power.

The FCC report entitled "Long Distance Market Share, Fourth Quarter 1998" dated, March 1999 in Tab 5 of AT&T's Submission, at table 3.5 shows toll revenues as reported to shareholders, with AT&T's market share at 41.8%, MCI WorldCom's at 25.1%, Sprint at 9.8% and "others" and 23.3%. Since the first quarter of 1996, AT&T lost 9.5%, MCI WorldCom gained 1.7%, Sprint gained .5% and "others" gained 8.3%. Thus, the most pronounced changes in the percentage of revenues market share have been the continuing decline for AT&T and the sharp increase for "others."⁶

The other tables in that compilation confirm that, by whatever measure, AT&T's market share has continued to decline and that most of that decline represents gains by providers other than MCI WorldCom and Sprint.

Under any measure, AT&T does not have such market share as to indicate that it possesses market power.

⁶ *The Commercial Appeal* on September 5, 1999 carried a long story concerning long distance prices, including a chart showing the market share of AT&T, MCI, Sprint and others in 1984 and in the last quarter of 1998, Tab 3 of AT&T's Submission.

4. AT&T's Cost Structure, Size And Resources.

The FCC concluded that AT&T's size, cost structures or revenues did not indicate that it had market power. No such changes have occurred since 1995 to warrant a different conclusion today.

5. No Joint Action.

By any measure AT&T, MCI WorldCom and Sprint, taken together, have a high, but steadily declining market share. The same thing was true in 1995 at the time of the FCC's decision reclassifying AT&T. The principal difference between now and then is that AT&T's market share has continued to decline but that decline has largely been gained by "others" rather than MCI WorldCom and Sprint. At the time of the FCC's decision there were charges of collusion, or price leadership, among the three larger carriers; see FCC's discussion at pages 3310-12, the FCC rejected that claim, at pages 3312-3315. Clearly, there is no basis for that claim under today's facts. Rate or price wars, such as have characterized the long distance market in recent months, are not consistent with collusive behavior.⁷ However, those charges have never been sustained. Rate wars, such as have characterized the long distance market in recent months, are not consistent with collusive behavior. To the contrary, not only has there been competition among the

⁷ See the numerous news stories in Tab 3 of AT&T's Submission and Tab 2 of its Supplemental Submission which describe the current price war and the resulting decrease in the stock prices of AT&T, MCI WorldCom and Sprint.

three larger carriers, the “others” have consistently increased their market share by aggressive competitive tactics.

No basis exists for concluding that AT&T, MCI WorldCom and Sprint have acted jointly, or that the growing presence of the “others” is not sufficient to preserve competition as an effective regulator of the prices for interexchange services.

D. THE EFFECT OF THE ADOPTION OF THE PRICE CAP REGULATIONS SET FORTH IN THE PROPOSED RULE WOULD BE TO DETER THE DEVELOPMENT OF COMPETITION FOR TENNESSEE RESIDENTIAL SERVICES.

Even if the relevant market is defined as the market for Tennessee residential services, neither AT&T, nor all the facilities-based IXC's as a group, have such market power as to justify the imposition of price cap regulation as the proposed rules provide. To the contrary, the imposition of such price cap regulation would deter the development and functioning of competition, and would be particularly prejudicial to AT&T.

As the information submitted shows, existing and potential competition is an effective regulator of the prices for all interexchange services, including residential. Competition regulates prices by driving prices to incremental costs, and by imposing costs on the customers causing those costs. Thus, if some prices are below cost, or if prices do not properly reflect costs for particular services, competition will tend to increase prices for those services. For competition to be an effective

regulator of prices means that costs in a competitive market may require that some prices be increased. For competition to be an effective regulator of prices, there can be no regulatory subsidies. Regulation which compels carriers to charge prices based on the desire to favor some category of customer by protecting that category from bearing the cost of such service is contrary to the basic premises of a competitive market.⁸

According to the FCC's figures in AT&T's Submission of Supporting Information, Tab 5, Table 4.2, in 1995 AT&T had a 71.1% market share of residential toll revenues in Tennessee and a 63.8% share in 1997; a 75.2% share of direct dial toll minutes in Tennessee in 1995 and 65.9% share in 1997. The "others" category took the greater part of this traffic from AT&T. These figures show not only that AT&T's residential market share has been declining in Tennessee, but also show the effects of Tennessee's regulation of AT&T's rates.

AT&T's Tennessee experience exemplifies how regulatory policies may control market share. In the often cited article by Landes and Posner, *Market Power In Antitrust Cases*, 94 Harv.L.Rev., 937 (1981) market power in regulated industries is discussed at pages 975-976:

Regulation may increase a firm's market share in circumstances where only the appearance and not the reality of monopoly power is created thereby. For example, in many regulated industries firms are compelled to charge uniform prices in different product or geographical markets despite the different costs of serving the markets. As a result, price may be above marginal

⁸ For this reason the indirect, concealed subsidies existing in local exchange markets are to be replaced by direct, specific universal service mechanisms.

cost in some markets and below marginal cost in others. In the latter group of markets, the regulated firm is apt to have a 100% market share. The reason is not that it has market power but that the market is so unattractive to sellers that the only firm that will serve it is one that is either forbidden by regulatory fiat to leave the market or that is induced to remain in it by the opportunity to recoup its losses in its other markets, where the policy of uniform pricing yields revenues in excess of costs. In these circumstances, a 100% market share is a symptom of a lack, rather than the possession, of market power.

Notice in this case that the causality between market share and price is reversed. Instead of a large market share leading to a high price, a low price leads to a large market share; and it would be improper to infer market power simply from observing the large market share. (Footnote omitted).

On divestiture in January 1984, AT&T had 100% of the Tennessee intrastate, interLATA market. AT&T's direct distance dial rates, including rates for operator assisted calls and residential optional calling plans, have been regulated ever since; first, under rate base rate of return regulation and then under price cap regulation under the existing IXC rules. The result of this pattern of regulation has been to keep AT&T's rates for these services at artificial levels, to discourage competition with respect to such services and thereby to give AT&T a higher market share for these residential services, than it otherwise would have had. In this manner, price cap regulation has served as a barrier to entry in the sense that it has served as a barrier to providing competitive residential services.

The statutory mandate is not to preserve regulation in order to preclude price changes. The statutory mandate is to exempt from regulation when existing and

potential competition is an effective regulator of prices or rates, T.C.A. §65-5-208(b). By continuing price cap regulation for residential services, the TRA would continue to deter the development of competition for these services. By recognizing that existing and potential competition is an effective regulator of the rates for such services, the TRA would bring the benefits of competition to residential customers, better service, more choices, and in the long run rates based on cost and not governmental favoritism.

Indeed, the fact that AT&T has continued to lose market share for residential services, especially to “others,” demonstrates the presence of effective competition for such customers despite the deterring effect of price cap regulation. The fact is, as AT&T’s Submissions show, there are numerous carriers offering numerous plans based on varying calling patterns, actively advertising, seeking and getting the business of Tennessee residential customers.

“A Bell Tolls Long Distance Telephone & Telecommunications Clearing House” publishes long distance rate comparisons. A copy of the comparison for Tennessee, dated September 3, 1999, appears in AT&T’s Submission, and a copy is attached to these comments as Exhibit 3. As that comparison shows, there are numerous carriers offering a variety of calling plans to Tennessee residential customers. For example, the first one listed is WorldxChange Communications, no monthly fee, no monthly min., and 24 hour rates of 0.048. Lowest rate within Tennessee. Rate only good evening 7 days a week from 7 PM – 6:59 AM. 1 min minimum/1 min billing. As stated, pricing plans change frequently.

To put AT&T and other facilities based IXC's under price cap regulation, while leaving others free to price as they will, cannot be supported by the facts. Any higher market share of the residential business AT&T has in Tennessee is more a reflection of regulatory policy than of AT&T's market power. Price cap regulation has deterred the development of competition, but competition nevertheless has been developing, demonstrating the great pressure for the development of competition. Price cap regulation is not relevant in today's market for long distance service; see Affidavit of Joseph Gillan.

In adopting rules, the TRA should base its decision on today's economic reality, including the rapid development of new technologies which are transforming the telecommunications; see Affidavit of Joseph Gillan, where the impact of technological developments is traced.

In adopting rules, the TRA must follow the mandate of the statute, remove price cap regulation and let competition be the effective regulator of the rates for all Tennessee interexchange services.

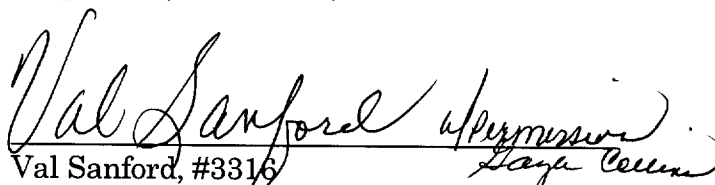
CONCLUSION

The statutory mandate is clear: "The authority shall in any event exempt a telecommunications service for which existing and potential competition is an effective regulator of the price of those services." The only issue here is whether, in any event, existing and potential competition is an effective regulator of the prices

for interLATA telecommunications services. Other factors cannot provide a basis for decision.

The facts are equally clear. As a matter of economic reality, existing and potential competition is an effective regulator of the prices for interLATA telecommunications services. The TRA's Rules must be based on the mandate of the statute and on economic reality. The IXC Rules as published in the Tennessee Administrative Register do not meet that test. The Rules as proposed by the IXCs do. The TRA should adopt the Rules as proposed by the IXCs.

Respectfully submitted,


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EXHIBIT 1

(2) Interexchange Carriers

(a) Definitions.

1. "Certificated interLATA resellers" are non-facilities based telecommunications companies providing intrastate interLATA service as resellers subject to Rule 1220—4—2—.57, and any portion of this rule sub-section in which said resellers are specifically mentioned.
2. "Intrastate interLATA services" are those services that provide two-way voice or data communications between points in different LATAs within the state.
3. "Interexchange carriers" (IXCs) are companies owning facilities in the state which consist of network elements, switches, or other communication transmission equipment used to carry voice, data, image, or video communications across the LATA boundaries within Tennessee (i.e., intrastate interLATA communications) or to carry any other communications traffic approved by the Authority for such companies.
4. "Local exchange service" is two-way voice or data service that originates and terminates within a local calling area.
5. "Tariff or price filing date" shall mean the date on which a tariff or price list is first published in the Authority's weekly tariff sheet.

(b) Certification Requirements.

1. All corporations, business entities, or persons offering intrastate interLATA services shall be required, in accordance with T.C.A. §65-4-201, to obtain a certificate of public convenience and necessity from the Authority before commencing operations in this state. An applicant for such a certificate shall submit in addition to that information required by T.C.A. §65-4-201 and any other applicable state statute or federal court ruling, the following information: (i) its name, address and telephone number; (ii) its corporate ownership; (iii) the name, address and telephone number of its corporate parent or parents, if any; (iv) a list of its officers and directors, or, if the applicant is not a corporation, a list of its principles and their directors if said principles are corporations, and; (v) the names, addresses and telephone numbers of its legal counsel.

This sub-part shall not apply to certificated interLATA resellers, who shall be subject to the certification provisions of Rule 1220—4—2—.57.

2. Certificates of convenience and necessity previously issued by the Authority authorizing intrastate interLATA service shall remain in effect, and IXCs holding such certificates on the effective date of this subsection are not required to take any additional action as a result of the adoption of this subsection.

3. After public notice and hearing, the Authority shall grant a certificate for intrastate interLATA service if it finds that (i) the applicant possesses sufficient managerial, financial, and technical abilities to provide the service; (ii) the applicant has demonstrated that it will adhere to and abide by all applicable Authority policies, rules and orders; and (iii) a grant of the certificate is in the public interest.
4. Nothing in this subsection shall be construed to allow an IXC to provide local exchange service without first obtaining a local service provider certificate.

(c) Tariffing Rules and Regulations.

- 1 Unless the Authority determines otherwise, certificated IXCs shall be required in accordance with T.C.A. §65-5-202 to file tariffs and price lists for all intrastate services offered in Tennessee. Such tariffs shall include (i) a description of every intrastate service offered, and; (ii) terms and conditions for each service. The Authority may approve such tariffs without the necessity of a formal hearing.
2. Each service offered by an IXC shall be made available at the rate specified in that IXC's tariffs to any customer meeting the terms and conditions for that service.

(d) Service and Rate Changes.

1. Service and rate changes shall become effective fourteen (14) calendar days from the tariff filing date. Any change in the previously approved terms and conditions of a service requires fourteen (14) calendar days notice to both the Authority and the customer in order to provide the customer sufficient time to qualify for the service
2. Customers affected by any rate increase shall be notified prior to the effective date of any such rate increase. A copy of such notice shall be filed with the Authority concurrent with the tariff filing.

(e) Special Services or Contracts.

1. A summary of any special contracts shall be filed with the Authority. The contract shall be made available to the Authority staff upon request. The Authority shall make a copy of the summary of the special contract available for inspection by any interested party.
2. Special contracts shall be allowed as long as the service is available at the same rate to any customer meeting the special terms and conditions.

(f) Consumer Safeguards.

1. No IXC or certificated interLATA reseller shall de-average rates for intrastate interLATA service without prior Authority approval.
2. No IXC or certificated interLATA reseller shall abandon residential services to any location in the state without prior Authority approval.
3. Certificated IXCs shall comply with the technology deployment requirements adopted by the Authority.
4. Certificated IXCs shall comply with service standards adopted by the Authority.
5. Certificated IXCs and certificated interLATA resellers shall comply with all extended area service toll-free calling plans as required by statute, unless otherwise ordered by a court of law.
6. Failure of any IXC to comply with the technology service, toll-free calling requirements or any other rule or order adopted by the Authority may result in the investigation of whether the IXC's Tennessee operations continue to be in the public interest; and/or the Authority may fine the IXC pursuant to T.C.A. §65-4-120 for violation of any Authority Order or pursue any other enforcement remedy provided by state law.
7. All certificated IXCs and interLATA resellers are required to comply with Authority Rule 1220—4—2—.56 when switching a consumer to its preferred interexchange carrier.
8. Nothing in this subsection precludes the Authority from acting on its own motion, or the motion of any interested party, to initiate an investigation of any prices or tariffs filed pursuant to this subsection. On the basis of such an investigation, the Authority, upon an affirmative determination of good cause, may suspend the effectiveness of such filing pending a hearing as to the validity of that filing.
9. Certificated IXCs and interLATA resellers shall participate in any support mechanism for Universal Service as may be approved by the Authority.

(g) IXC Reporting.

1. All IXCs shall be required to maintain books and records in a manner consistent with that required by the Federal Communications Commission for each company unless said reporting requirements are specifically waived or otherwise modified by the Authority.

2. The Authority shall monitor technology applications, quality of service and market share conditions through reports and oral presentations made by the IXC's. The Authority may request these reports and presentations on a periodic basis as required to provide the evaluation of service levels and technology deployment results and plans
3. The IXC's shall respond to customer complaints pursuant to Authority Rule 1220—4—2—.13.
4. In accordance with T.C.A. §65-4-305, each IXC shall file annually by April 1st with the Authority a statement under oath setting forth accurately the amount of its intrastate gross receipts from all telecommunications services for the preceding calendar year.
5. Each certificated IXC or certificated interLATA reseller shall file with the Authority any other reports as required by law.
6. Nothing in this rule precludes the Authority from acting on its own motion to require additional reports which it deems necessary.

Authority: T.C.A. §§65-2-102, 65-4-104, 65-4-111, 65 4-201, 65-5-202 and 65-5-203.

(2) Interexchange Carriers

(a) Definitions.

1. "Certificated interLATA resellers" are non-facilities based telecommunications companies providing intrastate interLATA service as ~~a resellers which are~~ subject to Rule 1220—4—2—.57, and any portion of this rule sub-section in which said resellers are specifically mentioned.
2. "Intrastate interLATA services" are those services that provide two-way voice or data communications between points in different -LATAs within the state.
3. "Interexchange carriers" (IXCs) are companies owning facilities in the state which consist of network elements, ~~and switches,~~ or other communication transmission equipment used to carry voice, data, image, ~~and or~~ video traffic communications across the LATA boundaries within Tennessee (i.e., intrastate interLATA communications) or to carry any other communications traffic approved by the Authority for ~~these carriers~~ such companies.
4. "Local exchange service" is two-way voice or data service that originates and terminates within a local calling area.
5. "Tariff or price filing date" ~~with the Authority~~ shall mean the date on which ~~the a new tariff filing or price sheet list~~ is first published in the Authority's weekly, tariff sheet.

(b) Certification Requirements.

1. All corporations, business entities, or persons offering intrastate interLATA services shall be required, in accordance with T.C.A. §65-4-201, to obtain a certificate of public convenience and necessity from the Authority before commencing operations in this state. An applicant for such a certificate shall submit in addition to that information required by T.C.A. §65-4-201 and any other applicable state statute or federal court ruling, the following information: (i) its name, address and telephone number; (ii) its corporate ownership; (iii) the name, address and telephone number of its corporate parent or parents, if any; (iv) a list of its officers and directors, or, if the applicant is not a corporation, a list of its principles and their directors if said principles are corporations, and; (v) the names, addresses and telephone numbers of its legal counsel.

This sub-part shall not apply to certificated interLATA resellers, who shall be subject to the certification provisions of Rule 1220—4—2—.57.

2. Certificates of convenience and necessity previously issued by the Authority authorizing intrastate interLATA service shall remain in effect, and IXCs holding such certificates on the effective date of this subsection are not required to take any additional action as a result of the adoption of this subsection.
3. After public notice and hearing, the Authority shall grant a certificate for intrastate interLATA service if it finds that (i) the applicant possesses sufficient managerial, financial, and technical abilities to provide the service; (ii) the applicant has demonstrated that it will adhere to and abide by all applicable Authority policies, rules and orders; and (iii) ~~that a grant of the certificate is in~~ the public interest.
4. Nothing in this subsection shall be construed to allow an IXC to provide local ~~telephone-exchange~~ service without first obtaining a local service provider certificate.

(c) Tariffing Rules and Regulations.

- 1 Unless the Authority determines otherwise, certificated ~~interstate IXCs~~~~interexchange carriers~~ shall be required in accordance with T.C.A. §65-5-202 to file tariffs and price lists for all intrastate services offered in Tennessee. Such tariffs shall include (i) a description of every intrastate service offered, and; (ii) terms and conditions for each service. The Authority may approve such tariffs without the necessity of a formal hearing.
2. Each service offered by an IXC shall be made available at the rate specified in ~~IXC~~ that IXC's tariffs to any customer meeting the terms and conditions for that service.
- ~~3. Any IXC required to justify a price change or new tariff with the Authority shall bear the burden of proof to show that the tariff filing is just and reasonable.~~
- ~~4. Tariff filings or price lists involving new services or rate reductions shall be suspended only upon a showing of good cause.~~

(d) ~~Rate and Price Setting Requirements.~~

- ~~1. IXC services shall be classified as one of two categories of service: 1) Residential services and; 2) All Other services~~
- ~~(i) The Residential Services category shall include all services for which the majority of customers are classified as residential customers by the local exchange carrier for application of local service rates.~~

~~(ii) Any new service that is not classified as "residential" shall be placed in the All Other Services category.~~

~~2 The Authority shall only establish a net revenue cap for the Residential services category. The initial aggregate revenue cap for each IXC shall be that company's average intrastate revenue per minute for the Residential services category in effect on the effective date of this rule sub-section less the average intrastate switched access charges per minute for the residential services category in effect on the effective date of this rule sub-section.~~

~~3. The prices and price cap for the Residential services category shall be adjusted to reflect any changes in access charges to IXCs. The amount of any access charge change for the residential services category for each IXC shall be the per minute reduction based on total intrastate minutes of use applied to the intrastate minutes of use in the residential services category for each IXC. The minutes of use shall be those reported in the most recent annual reports under sub-section (2)(i) 5. of this rule.~~

~~4. Prices for the All Other Services category may be reviewed in accordance with the provisions of this rule sub-section by the Authority.~~

(ed) Price Increases or Decreases Service and Rate Changes.

1. ~~Price Service and rate reductions changes shall become effective on the fourteen (14) calendar days from the tariff filing date. Any change in the previously approved terms and conditions of a service requires fourteen (14) calendar days notice to both the Authority and the customer in order to provide the customer sufficient time to qualify for the service. The Authority may however, review these reductions upon its own motion or upon the petition of any aggrieved party.~~

2. ~~Prices may be increased thirty (30) days after the price list filing date and after approval by the Authority provided, however that prices for the Residential services category shall not be increased above the prescribed net revenue cap. Affected customers Customers affected by any rate increase shall be notified by direct mail or by publication of a notice in a newspaper of general circulation in the affected service area thirty (30) days prior to the effective date of any such rate increases. A copy of such notice shall be filed with the Authority concurrent with the tariff filing. Each proposed rate increase shall be accompanied by intrastate minutes of use for the service being increased, as reported in the most recent annual report for that company, the revenue impact of the proposed increase, and all other information necessary to demonstrate that the proposed increase does not exceed the net revenue cap for the residential services category.~~

- ~~3. Any change in the previously approved terms and conditions of a service requires thirty (30) days notice to both the Authority and the customer in order to enable the customer sufficient time to qualify for the service.~~

~~(f) New Services.~~

- ~~1. New services shall become effective upon filing of tariffs and price lists with the Authority. The Authority may however review these tariffs for new services upon its own motion or upon the petition of any aggrieved party.~~
- ~~2. Services or calling plans that automatically convert customers from an existing service shall not be classified as a new service. New services are those which are independent from other previously approved services and are filed separately from any existing service or calling plan.~~
- ~~3. The Authority may require the submission of additional information to use in setting any initial maximum net revenue cap deemed necessary for residential services.~~

~~(ge) Special Services or Contracts.~~

1. A summary of any special contracts shall be filed with the Authority. The contract shall be made available to the Authority staff upon request. The Authority shall make a copy of the summary of the special contract available for inspection by any interested party.
2. Special contracts ~~or special pricing packages~~ shall be allowed as long as the service is available at the same rate to any customer meeting the special terms and conditions.
- ~~3. The terms and conditions of the special contract must relate to technological availability and capacity or volume requirements for the service at issue, and shall not include tying or bundling conditions, resale restrictions, or geographical restrictions not mandated by technological ability.~~

~~(hf) Consumer Safeguards.~~

1. No IXC or certificated interLATA reseller shall de-average rates for intrastate interLATA service without prior Authority approval.
2. No IXC or certificated interLATA reseller shall abandon ~~residential~~ services to any location in the state without prior Authority approval.

3. Certificated IXCs shall comply with the technology deployment requirements adopted by the Authority.
4. Certificated IXCs shall comply with service standards adopted by the Authority.
5. Certificated IXCs and certificated interLATA resellers shall comply with all extended area service toll-free calling plans as required by statute, ~~deemed to be in the public interest by the Authority~~ unless otherwise ordered by a court of law.
6. Failure of any IXC to comply with the technology service, toll-free calling requirements, ~~and or any~~ other rule or order adopted by the Authority may result in the investigation of whether the IXC's Tennessee operations continue to be in the public interest; and/or the Authority may fine the IXC pursuant to T.C.A. §65-4-120 for violation of any Authority Order or pursue any other enforcement remedy provided by state law.
7. All certificated IXCs and interLATA resellers are required to comply with Authority Rule 1220—4—2—.56 when switching a consumer to its preferred interexchange carrier.
- ~~8. If the public interest so warrants the Authority, the IXCs or any affected party may recommend or petition for the termination of price cap regulation.~~
98. Nothing in this subsection precludes the Authority from acting on its own motion, or the motion of any interested party, to ~~suspend a tariff or~~ initiate an investigation ~~on~~ of any prices or tariffs filed pursuant to this ~~section~~ subsection. On the basis of such an investigation, the Authority, upon an affirmative determination of good cause, may suspend the effectiveness of such filing pending a hearing as to the validity of that filing.
- ~~109.~~ Certificated IXCs and interLATA resellers shall participate in any support mechanism for Universal Service as may be approved by the Authority.

(ig) IXC Reporting.

1. All IXCs shall be required to maintain books and records in a manner consistent with that required by the Federal Communications Commission for each company unless said reporting requirements are specifically waived or otherwise modified by the Authority.
2. The Authority shall monitor technology applications, quality of service and market share conditions through reports and oral presentations made by the

IXCs. The Authority may request these reports and presentations on a periodic basis as required to provide the evaluation of service levels and technology deployment results and plans

3. The IXCs shall respond to customer complaints pursuant to Authority Rule 1220—4—2—.13.
4. In accordance with T.C.A. §65-4-305, each IXC shall file annually by April 1st, with the Authority a statement under oath setting forth accurately the amount of its intrastate gross receipts from all telecommunications services ~~sources~~ for the preceding calendar year.
- ~~5. Each IXC shall file reports annually by April 1st containing: (1) a description of new service offerings during the previous calendar year; (2) the previous calendar year's intrastate minutes of use, revenues, and access charges for each service included in the residential services category, and; (3) total intrastate revenues and minutes of use for the All Other category, and; (4) listing of all rate adjustments made during the year including the impact on intrastate revenues.~~
65. Each certificated IXC or certificated interLATA reseller shall file with the Authority any other reports as required by law.
76. Nothing in this rule precludes the Authority from acting on its own motion to require additional reports which it deems necessary.

Authority: T.C.A. §§65-2-102, 65-4-104, 65-4-111, 65 4-201, 65-5-202 and 65-5-203.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Regulatory Authority.

K. David Waddell
Executive Secretary

Subscribed and sworn to before me this the _____ day of _____, 1999.

Notary Public

My commission expires on the _____ day of _____, 19__.

The notice of rulemaking set out herein was properly filed in the Department of State on the _____ day of _____, 1999.

Riley C. Darnell
Secretary of State

By: _____

EXHIBIT 2

7¢ A MINUTE
around the clock!

Place sticker
on enclosed
reply card!



7¢ a minute, 24 hours a day, 7 days a week, for just \$5.95 a month.* And the opportunity to make a difference with every call you make.

It all starts with 60 minutes of long distance calls, FREE every month for 6 months. And a coupon for a pint of Ben & Jerry's® every month for one year, FREE.**

Dear Friend,

When you make a long distance call, you expect it to go through without a hitch . . . and your voice to be heard loud and clear.

You expect to save . . . especially with a calling plan that works for you.

And you expect an operator to assist you . . . even if you're trying to place a call at 3:00 in the morning.

If you're with MCI, Sprint or AT&T, you may be getting all that right now. But I want you to know that with one company — Working Assets Long Distance — you get top-quality phone service with rates that are, on average, the same as — and sometimes lower than — comparable plans offered by the Big Three carriers.

You see, Working Assets is the *leading long distance company working for peace, human rights, equality, education and the environment*. In fact, we donate 1% of your charges to progressive nonprofits. In the 13 years we've been in business we've raised more than \$16 million.

So every time you make a long distance call as a Working Assets customer, you can also expect to help build affordable housing in our cities . . . and help communities clean up toxic waste dumps.

You can help protect a woman's right to choose . . . provide emergency relief to people devastated by AIDS in Africa . . . and expose corporate polluters around the world.

Best of all, with Working Assets you help these causes just by making the long distance calls you'd make anyway. So you can make a difference without spending anything extra.

"Working Assets was one of our most effective allies in the fight to stop the destruction of old-growth forests. Your letters and calls showed Home Depot that selling old-growth wood is unacceptable and as barbaric as hunting whales to extinction. Thank you for


(over, please)

bringing us one step closer to protecting these precious ecosystems.”

*— Kelly Quirke, Executive Director
Rainforest Action Network*

First things first — our Round-the-Clock Plus calling plan delivers 7¢ a minute,
24 hours a day, 7 days a week.

YES, you heard it right, a mere 7¢ a minute on every direct-dialed, state-to-state call you make around the clock, with a \$5.95 monthly fee. It's that simple.

 Want to save more money when you call around the world? With our 24-Hour International Discount Plan (just \$2 a month when combined with Round-the-Clock Plus) you'll receive one rate per country for direct-dialed calls, 24 hours a day, 7 days a week. Our rates are, on average, lower than AT&T's One Rate International Plan®. The rate to Canada and the United Kingdom is only 10¢ a minute all the time. Call France any time for just 22¢ a minute. And call Japan around the clock for only 26¢ a minute.

The fact is, Working Assets offers rates that are, on average, the same as — or slightly lower than — comparable calling plans offered by the Big Three.

What about reliability and service? With Working Assets your calls go over fiber-optic lines, too. So your conversations will be as clear as a bell.

When you're on the road, you'll find that the number on your Working Assets calling card is based on your own phone number. That's a nice touch. Best of all, it's the only calling card (made from environmentally friendly recycled plastic) that helps you support progressive causes every time you use it.

If you use your calling card often, you could benefit by enrolling in our new Calling Card Discount Plan. Our friendly customer service representatives will be happy to sign you up any day of the week.

We support the same worthy causes you do.

Now if great service and low rates were all we had to offer you, you'd already have some good reasons to switch. But as I mentioned, we also make it easy for you to support more of the worthwhile causes that depend on concerned individuals like you.

Here are just a few groups Working Assets supported last year.

Environmental Working Group. Conducts hard-hitting investigations to help parents and communities protect children from toxic chemicals in food, water, air or in schools.

Rainforest Action Network. Works to protect the earth's rainforests and their inhabitants through education, grassroots organizing and nonviolent direct action.

Doctors Without Borders. Provides medical assistance to victims of armed conflicts and disasters.

(next page, please)

Peace Action. Works nationwide to abolish nuclear weapons, cut military spending and end sanctions against Iraq.

Center to Prevent Handgun Violence. Works to prevent gun-related injuries and deaths nationwide through public education, research and legal action programs.

Physicians for Reproductive Choice and Health. Organizes doctors to be more visible and active in support of universal reproductive health care.

9to5, Working Women Education Fund. Combats discrimination in the workplace by providing information, education, support and leadership training to low-wage working women.

Stand for Children. Provides a voice for children and families by being a catalyst for improvements in child care, literacy and after-school programs.

Fund for Investigative Journalism. Gives grants to freelance reporters for original investigative work and media criticism in order to expose corruption and societal ills.

Fairness & Accuracy In Reporting. Documents media bias and disseminates public interest viewpoints through a national weekly radio program and bimonthly magazine.

"Support from Working Assets was instrumental in letting Congress know that Americans believe women should be given the tools to make responsible choices about their health."

— Gloria Feldt, Executive Director
Planned Parenthood

13 years in business. \$16 million in donations.

Since we started in 1986, Working Assets has raised more than \$16 million for hundreds of worthy nonprofits like these. And if you join Working Assets, you can help us donate even more.

As a customer, you can also cast a vote for where our donations go. Want more of the money channeled to environmental groups? Fine by us. Human rights groups? We'll see to it.

And we're so committed to these causes, we'll make these donations whether or not we make a profit.

"Working Assets customers keep on coming through! Whether it's protecting dolphins, sea turtles or gray whales, calls and letters have streamed in to make a crucial difference for these environmental campaigns."

— David Phillips, Executive Director
Earth Island Institute

We make your voice heard, too.

With Working Assets, you'll have a direct line to selected decision-makers in

(over, please)

government and business. Every month your bill will alert you to two urgent issues we think you'll be concerned about, telling you whom to contact to make a difference.

If you have something to say on the subject, you can call the targeted leaders FREE every day of the week (up to two calls a day, five minutes in length) or we can write and send a low-cost, compelling CitizenLetterSM on your behalf instead.

Even our bill says a lot about us. It's printed on unbleached, 100% post-consumer recycled paper and printed with soy-based ink to minimize toxins. What's more, we plant 17 trees for every ton of paper we use. If every phone company in America did this, we'd save over a million trees each year.

60 minutes of long distance calls every month for 6 months and a pint of **BEN & JERRY'S** every month for a year. All FREE.

Just send in the enclosed reply card and switch to Working Assets. Experience for yourself how reliable our service is . . . how clearly your voice comes through . . . and how much you'll save with our special Round-the-Clock Plus calling plan.

And if helping worthy causes with every call isn't rewarding enough, you'll even enjoy a coupon for a FREE pint of Ben & Jerry's® Ice Cream, Low Fat Ice Cream, Frozen Yogurt, Sorbet or 12-ounce Frozen Smoothie™ every month for a year. Our treat.

What's more, you'll receive a special thank-you gift of 60 FREE minutes of long distance calls every month for 6 months.

Like you, we want to support human rights wherever they are threatened, stop the violence all around us and clean up the mess we've made of the planet.

With Working Assets you not only get the reliable, affordable long distance service you expect — but you can also do a world of good every time you make a long distance call.

I look forward to welcoming you as a Working Assets customer.

Sincerely,



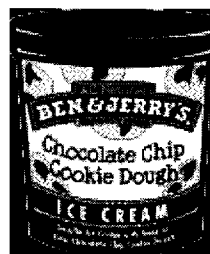
Laura S. Scher
Chief Executive Officer

P.S. Working Assets is reliable, affordable — and supports the same worthy causes you do. Switch now and reward yourself with a 7¢-a-minute rate on direct-dialed, state-to-state calls around the clock for just \$5.95 a month. Plus, get 60 minutes of FREE long distance calls every month for 6 months. And a coupon for a pint of Ben & Jerry's® every month for a year, FREE. Switch to Working Assets today!


WORKING ASSETS®
Making it easy to make a difference.

At Working Assets, we know how much power a simple act can have. It can help preserve our forests. Protect a woman's right to choose. And help feed the hungry. You see, Working Assets does much more than just connect you to 7¢-a-minute direct-dialed state-to-state calls with a \$5.95 monthly fee,* crystal-clear lines and competitive rates. We connect you to the causes you care about most by donating 1% of your monthly charges to the nonprofits you help choose. All of which means, when you sign up for our affordable service, your long distance dollar really goes the distance.

Plus, when you sign up, we'll send you a certificate every month for 12 months for a FREE pint of Ben & Jerry's® Ice Cream, Low Fat Ice Cream, Frozen Yogurt or Sorbet. And to sweeten the deal, we'll dish out 60 minutes of crystal-clear long distance every month for six months--FREE.*



If you're hungry for social change--and a delectable dessert every month--simply fill out the form below. © Ben & Jerry's Homemade Holdings, Inc., 1999

☐ **YES!** I want to join Working Assets Long Distance.
(To sign up, fill out the form below and press the JOIN button to send your completed form.)

First Name*	<input type="text"/>
Last Name*	<input type="text"/>
Street Address*	<input type="text"/>
City*	<input type="text"/>
State*	<input type="text"/>
Zip*	<input type="text"/>
Your Email Address <small>Working Assets will only use your e-mail address to communicate with you directly. We will not sell or rent your e-mail address.</small>	<input type="text"/>
<p><i>Please list all your area codes and numbers to be switched to Working Assets*:</i></p> <p><input type="text"/> - <input type="text"/> - <input type="text"/></p>	

<div style="text-align: center;"> <input type="text"/> - <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> - <input type="text"/> </div>	
Current carrier is	<input type="checkbox"/> MCI <input type="checkbox"/> AT&T <input type="checkbox"/> Sprint <input checked="" type="checkbox"/> Other <input type="text"/>
<i>I was referred to Working Assets by a member:</i>	
Member's name:	<input type="text"/>
Member's email:	<input type="text"/>
Member's phone number:	<input type="text"/> - <input type="text"/> - <input type="text"/>
By typing in my name I agree to the Terms & Conditions. Electronic Signature*:	<input type="text"/>
Please review the Terms & Conditions for important details of your service. To sign up, press the JOIN button now and we'll submit your form*.	<input type="checkbox"/> I have reviewed the Terms & Conditions of my service.
<input type="button" value="Join!"/> <input type="button" value="Erase form"/>	

**Required fields*

Service available to customers in the USA only.

***Terms & Conditions**

Round the Clock Plus Terms & Conditions: The rate for direct-dialed state-to-state calls is 7¢ a minute, 24 hours a day, seven days a week. This plan includes a \$5.95 monthly fee. Rates for direct-dialed in-state calls vary by state. All calls are billed to the next highest complete minute. Rates do not include applicable taxes and supplemental fees.

Working Assets will mail me one certificate every month for my first six months of service, each good for 60 FREE minutes of long distance. I redeem each certificate by enclosing it in any bill I choose. Then on my next bill, Working Assets will credit the 60 FREE minutes to my account. The 60 FREE minutes will be credited at the domestic off-peak or flat per-minute rate, depending on your calling plan. Limit one certificate redeemed per bill. Certificates are not redeemable for cash.

Working Assets will also mail me a coupon good for a pint of Ben & Jerry's® each month for one year. Working Assets reserves the right to substitute the Ben & Jerry's® premium with a premium of equal or greater value. Certificates and coupons are not redeemable for cash. In order to continue receiving my free gifts, my account must remain connected and be no more than 60 days past due. Offer void where prohibited. Rates are effective 9/1/99. Prices, terms and conditions subject to change.

I understand that by entering my name on this form, I authorize Working Assets Long Distance to switch me to its long distance service and that an independent verification company may be calling on behalf of Working Assets to confirm my request. When I switch, my local phone company may apply a one-time switching fee of about \$5. In states permitting two presubscribed carriers per line, I authorize Working Assets to carry my long distance traffic and understand that my local toll traffic will continue to be carried by my existing carrier. By submitting this order, I confirm that I am at least 18 years of age, a member of the household and authorized to switch long distance on the telephone number listed on this order form and agree to take the affirmative steps required to make this switch.

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[GiveForChange.com](#)
A simple, easy and secure way to make an online tax-deductible donation to a progressive nonprofit organization of your choice.

Join [ShopForChange.com](#)
Now Working Assets gives 5% of your online purchases to progressive nonprofit groups when you access merchants through [ShopForChange.com](#).

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**Citizen Actions at a Glance**

**Protect
Environmental
Laws from
WTO Attacks**

**Stop World Bank
from Funding the
Occupation of
Tibet**

**Contact
Information for
your elected
officials**



Working Assets members can cast your vote online! Thanks to you and other members using our long distance, credit card, Internet access and ShopForChange service we expect to donate a record breaking \$4 million to 50 nonprofit groups. We will decide how these funds will be allocated. Vote online today.


[\(click to vote\)](#)



101499:0040PDT


BEL AIR, CALIFORNIA
WHERE AUTHORITIES SAID THEY FOUND A DEAD GUY AT WILT CHAMBERLAIN'S HOME BUT COULDN'T IDENTIFY THE BODY. I'M THINKING YOU GOT A SIXTY-THREE YEAR OLD SEVEN FOOT BLACK GUY. CALL UP BILL RUSSELL AND IF HE ANSWERS, IT'S WILT.

[\(click to continue\)](#)




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Help save the world.

JOIN TODAY.



- Customer Service
- Rate Plans
- Contact Numbers & E-mails

Customer Service | Rate Plans

Working Assets offers the highest quality service, crystal-clear connections and rate plans that are on average the same as - or slightly lower than - the Big Three's. That's on top of the 1% of your phone charges that we donate to progressive nonprofit organizations, all at no extra cost to you.

We offer a variety of calling plans. See which one best fits your needs. To enroll in any of our calling plans, just call Customer Service at 800/788-0898.



Round-the-Clock Plus Plan
7 cents a minute, \$5.95 monthly fee.



5¢ Evenings Plan
5 cents a minute for evening hours all week, \$5.95 monthly fee.



5¢ Evenings and Weekends Plan
5 cents a minute for evenings and weekends, \$4.95 monthly fee.

Online Saver Plan
9 cents a minute, \$1.00 monthly fee. Autopayment and E-mail billing required.

Add-on Plans

Calling Card Discount Plan
25 cents a minute on all of your domestic calling card calls with NO surcharges for just a \$1 monthly fee.

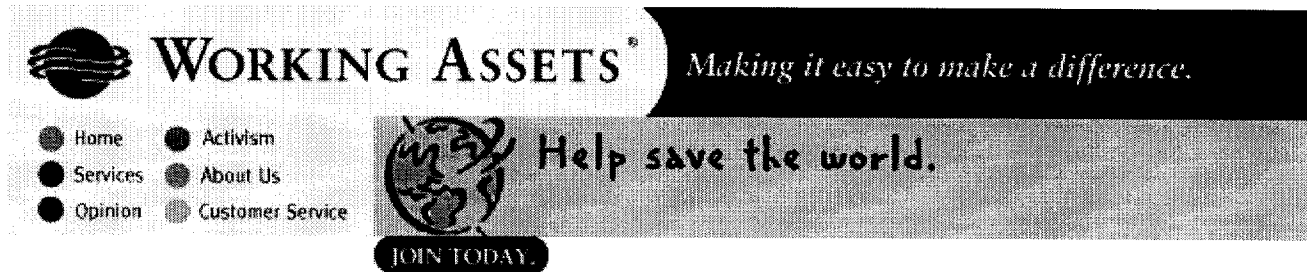
24-Hour International Discount Plan

International calling plan with one low flat rate per country all the time.

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5¢ Evenings and Weekends Plan
5 cents a minute for evenings and weekends, \$1.95 monthly fee.

Best Hours Plan
10 cents a minute for evenings and weekends, no monthly fee.

Sunday Savings Plan
5 cent Sundays, no monthly fee.

Round-the-Clock Plan
15 cents a minute, no monthly fee.

Round-the-Clock Plus Weekends
5 cents a minute on weekends and 10 cents a minute on weekdays, \$4.50 monthly fee.

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You're very important to us, so if there's any way we can be of assistance, please contact us right away.

Working Assets Long Distance

- For Customer Service: Receive online help for your long distance account. Or, call us at 800-788-0898.
- Email your questions to us at wald@wafs.com

Working Assets Credit Card

- For questions regarding your Working Assets credit card, call the bank's customer service department at 1-800-537-3777.
- To request an application, go to our [Web page](#) or e-mail us at wacc@wafs.com

Business Long Distance Service

- Find out more about our business service.
- Email your questions to wabs@wafs.com
- Call Business Customer Service at 1-800-789-9253.

Working Assets Internet Access

- Customer Support: -- Change your password, check your account use and more
- Technical Support Help Pages: Or, you can call the Technical Support Team at 1-800-395-8410.
- Questions on your bill? Call 1-888-926-DISK.
- For Questions or comments, email us at waia@wafs.com.

Activism:

- Learn more about the [Flash Activist Network](#).
- To reach FAN customer service, call 1-800-772-1077, or email us at fan@wafs.com.
- Call our Citizen Action Information Hotline at 1-800-INFO-735, or email us at activism@wafs.com.

Feedback

Comments about this site?
E-mail webhead@wafs.com

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EXHIBIT 3

CATCH THE MONKEY AND WIN \$20!



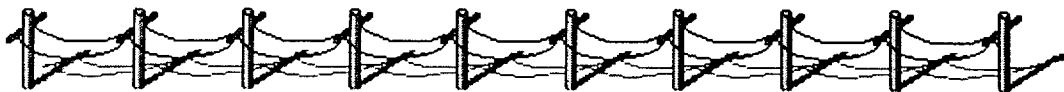
AD INFO



Tennessee - A Bell Tolls



The Telephone Service Clearinghouse



If you would like to receive email as we update our rates comparison pages for Long Distance and Calling Cards within Tennessee you should sign up for our free newsletter.

Please note that we present these intrastate long distance rates within Tennessee for informational purposes only. Pricing plans change frequently and vary by geographic location. You should verify calling rate plans within Tennessee with the long distance carrier, preferably in writing, prior to switching your intrastate long distance service within Tennessee.

No warranty is expressed or implied. While we strive for accuracy, we assume no liability for errors or omissions. These rates are for calls made from a direct dial residential phone in Tennessee to Tennessee when your local carrier allows a long distance carrier to service the call. You should check with your local telephone company to find out which area codes and exchanges within Tennessee are eligible for long distance service. Some states are now allowing what they call local toll calls and these rates are sometimes lower than the intrastate long distance rates.

When away from home, check out our Calling Card Rate Comparison for impartial comparisons of all the major cards.

Besides taking a look at the Tennessee intrastate long distance rates below, we suggest you look at our tips for long distance savings when you get a chance. You'd be surprised how many ways you can save! Also when you are done looking at these rates, please return to our main page.

Intrastate long distance calling plan rates within Tennessee quoted are current as of 09-03-1999 03:00:46

For intrastate long distance calling plan rates in other states other than Tennessee see the list of states.

Service Provider	Monthly Fee	Monthly Minimum	24 hour rate	Notes
WorldxChange Communications	0.00	0.00	0.048	Lowest rate within Tennessee. Rate only good evening 7 days a week from 7 PM - 6:59 AM. 1 min minimum/1 min

Absoluté Cents iPlan				billing. Rates include both USF and PICC charges. Rate reflects a 5% discount for internet billing.
WorldxChange Communications Absolute Cents	2.00	0.00	0.050	Rate only good evening 7 days a week from 7 PM - 6:59 AM. 1 min minimum/1 min billing. Rates include both USF and PICC charges.
AT&T One Rate Online	2.50	0.00	0.080	\$2.50 USF/PICC included in monthly fee. Must signup online and accept bills via internet. Ask for a better in-state rate and customer service might just give it to you!
WorldxChange Communications xChanger	6.44	0.00	0.090	1 min minimum/1 min billing. PICC/USF of \$1.49 included in monthly fee. This plan is a dial-around, you do not need to change your long distance carrier.
WorldxChange Communications Penny Plan	0.00	0.00	0.090	1 min minimum/1 min billing. There is no USF or PICC fee on this plan. This plan is a dial-around, you do not need to change your long distance carrier.
Promisenet (10- 16-444) Internet Signup	0.00	20.00	0.098	18 sec minimum/6 sec billing. Must pre- register on web before using.
Promisenet (10- 16-444) Internet Signup	2.00	0.00	0.098	18 sec minimum/6 sec billing. Must pre- register on web before using.
KallCent\$ Dialaround	0.00	0.00	0.099	Must be registered to credit card before using dialaround. USF included in rates.
QWEST Dial Around (10-10- 432) Off-peak Rates	1.00	0.00	0.100	Rate only good off-peak hours of M-F 5 PM-7:59 AM, and weekends. Monthly fee includes \$1 USF.
Excel Telco Choice (10-10- 297) 1-800-875- 9235	0.69	0.00	0.100	Rates include a \$0.69 USF per month.
Acculing QuickLinq Paper billing	2.00	0.00	0.103	6 second increments, \$1 activation fee, rates include a 4% USF
Acculing QuickLinq Internet billing	1.00	0.00	0.103	6 second increments, \$1 activation fee. Rates include a 4% USF.
Matrix Y.E.S. Residential 1-800- 282-0242	5.65	0.00	0.104	Rates reflect 4.75% USF
OPEX Internet Signup	1.07	25.00	0.108	Intrastate 18 sec minimum/6 sec increments. Rates include 4.9% USF and \$1.07 PICC.
OPEX Internet Signup	3.57	0.00	0.108	Intrastate 18 sec minimum/6 sec increments. Rates include 4.9% USF and \$1.07 PICC.
QWEST Q.Biz	4.25	25.00	0.117	This is a business plan. 30 sec minimum/1 sec billing. Monthly fee

				includes \$4.25 PICC and 6.4% USF.
ATN ULTRAcall 1-800-477-9692	1.44	0.00	0.123	6 sec minimum/6 sec billing. Rates include 7.2% USF and \$1.44 PICC.
Frontier Unitel Plan	3.55	0.00	0.123	1 min minimum/1 min billing. Rates include \$3.55 PICC and 6.7% USF fee. Rates good for residential or business lines.
MCIWorldcom One Savings Off-peak rates 1-800-444-3333	1.07	5.00	0.129	Rates reflect MCI 7.2% USF and \$1.07 and are ONLY GOOD EVENINGS AND WEEKENDS.
Planet Earth Communications IXC	1.03	0.00	0.135	Must be billed through internet. PICC fee of \$1.03 included in monthly fee. If you sign up the last day of the month the \$10 minimum still applies for that month. This plan includes a 7.9 CPM interstate rate.
Planet Earth Communications IXC	1.03	10.00	0.135	Must be billed through internet. PICC fee of \$1.03 included in monthly fee. If you sign up the last day of the month the \$10 minimum still applies for that month. This plan includes a 6.9 interstate rate.
QWEST Dial Around (10-10-432) Daytime Rates	1.00	0.00	0.140	Rate only good during M-F 8 AM-5 PM. Monthly fee includes \$1 USF.
WorldxChange Communications Absolute Cents iPlan	0.00	0.00	0.143	Rate only good daytime 7 days a week 7 AM - 6:59 PM. 1 min minimum/1 min billing. Rates include both USF and PICC charges. Rate reflects a 5% discount for internet billing.
RoadTel Calling Card	0.00	0.00	0.149	6 second billing. Activation fee of \$3.95 one time to setup account.
QWEST Q Home	7.45	0.00	0.150	1 min minimum/1 sec billing. Promotion of first 10 minutes of international calls each month for 1 cent a minute or 4 holidays of 30 minutes at 1 cent a minute. Monthly fee includes \$2.50 USF/PICC.
Big Planet Residential	5.95	0.00	0.150	PICC/USF of \$3 included in monthly fee. 1 minute minimum/1 sec increments. Big Planet resells QWEST service at higher interstate rates.
WorldxChange Communications Absolute Cents	2.00	0.00	0.150	Rate only good daytime 7 days a week 7 AM - 6:59 PM. 1 min minimum/1 min billing. Rates include both USF and PICC charges.
Excel Telco Dial & Save (10-10-457) 1-800-875-9235	0.69	0.00	0.150	Rates include a \$0.69 USF per month.
Frontier One Websaver	3.06	3.00	0.157	Rates reflect 4.9% USF and \$1.07 PICC. Must signup online and bill via credit card
				Must be billed through your local carrier.

Lifeline Residential 1-800- 607-5145	1.07	0.00	0.200	Rate includes \$1.07 PICC and 5% USF. 10% of each bill donated to charity. For direct billing, add \$.93 to your monthly bill.
AT&T Lucky Dog Dial Around (10- 10-345) 1-800- CALL-ATT	0.00	0.00	0.200	After first minute rate is lower by 10 cents
MCIWorldcom One Savings Weekday Daytime Rates 1-800-444- 3333	1.07	5.00	0.268	Rates reflect MCI 7.2% USF and \$1.07 PICC and are only good weekday daytime.
MCIWorldcom Telecom USA (10- 10-220) 1-800- 444-3333	0.00	0.00	0.990	After first minute next 19 minutes are free, then each additional minute is 9 cents.
Excel Telco (10- 10-399) 1-800- 875-9235	0.00	0.00	1.300	Rates include USF fees. After first minute next 9 minutes are free. Then each additional minute is at a lower rate. Check webpage for full details.

Intrastate long distance carriers interested in having their intrastate long distance rates and calling plan within Tennessee listed here should contact us at: intra@abelltolls.com.

Please note that a toll free number is required for a return call to confirm entity, intrastate long distance rates and calling plan within Tennessee. This is not a guarantee that we will list your services or intrastate long distance rates. A Bell Tolls wants to list intrastate long distance rates of responsible carriers.

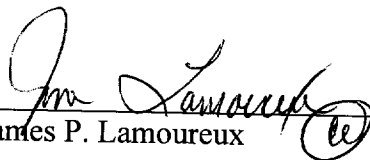
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CERTIFICATE OF SERVICE

I hereby certify that a copies of AT&T's Comments and Proposed Rule, AT&T's Supplemental Submission of Supporting Material; and Affidavit of Joseph Gillan filed in TRA Docket No. 98-00097 were sent by Overnight Mail to the following parties of record this 18th day of October, 1999.


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**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**
Nashville, Tennessee

Notice of Rulemaking:	}
Rule 1220-4-2.55(2)	}
("IXC Rules")	}
	}

AFFIDAVIT OF JOSEPH GILLAN

Joseph Gillan, being duly sworn, deposes and says:

I. Introduction

1. My name is Joseph Gillan. My business address is PO Box 541038, Orlando, Florida, 32854.
2. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics specializing in the economic analysis of regulated industries. From 1980 to 1985, I was on the staff of the Illinois Commerce Commission where I had responsibility for the policy analysis of issues created by the emergence of competition in regulated markets, in particular the telecommunications industry. While at the Commission, I served on the staff subcommittee for the NARUC Communications Committee and was appointed to the Research Advisory Council overseeing NARUC's research arm, the National Regulatory Research Institute.
3. In 1985, I left the Illinois Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. During my employment with U.S. Switch, I was first responsible for all regulatory issues as the company's Director, Regulatory Affairs. I was later promoted to Vice President-Marketing/Strategic Planning where I also had responsibility for negotiating partnership arrangements with independent telephone companies, in addition to overseeing regulatory and business analysis.
4. Since 1987, I have been a consulting economist with a practice that specializes in the evaluation of competitive and regulatory trends in telecommunications. In

this role, I have provided expert testimony before more than 25 state commissions, including the Tennessee Regulatory Authority, four state legislatures, the Commerce Committee of the United States Senate, and the Federal/State Joint Board on Separations Reform. I currently serve on the Advisory Council to New Mexico State University's ("NMSU") Center for Regulation.

5. In addition to providing conventional regulatory services such as expert testimony, however, I also provided economic analysis and strategic advice to competitive telecommunications companies where industry trends intersect with regulatory policy. I am the principal economic adviser to the Competitive Telecommunications Association (CompTel), which has been, and continues to be, the leading national trade association for competitive entrants to this industry.
6. Overall, my consulting career has been intertwined with the development of the competitive "long distance" industry as it evolved through its various stages of entry, consolidation, more entry (and more consolidation) to its highly competitive position today. Of course, this observation is not intended to imply a *causal* relationship, only that my consulting practice has always focused on assisting competitive entrants in reducing barriers to entry and appreciating the competitive opportunity provided by changes in government policy. This focus -- and the extended period over which I have advised competitive carriers -- provides a unique perspective from which to evaluate current and expected market conditions for "long distance" services.
7. In this proceeding I have been asked by AT&T Communications of the South Central States, Inc. (AT&T) to address the question of whether any form of "price cap" regulation is appropriate to competitive long distance services, given the nature of today's market and the changes that are underway in that market. Specifically, I address whether it is reasonable to impose a "residential services" net revenue cap as proposed by Rule 1220-4-2.55(2)(d) in an environment as competitive -- and, more importantly, as *dynamic* -- as today's long distance "market."
8. As a general proposition, "price caps" or "net revenue caps" are *justifiable* only if there is a compelling argument that competition is not adequate to protect consumer interests. If competition is an effective regulator of price -- and, without a question, that is the case for long distance services -- then artificial controls on price are inappropriate and unnecessary. Moreover, for the regulatory approach to even be *viable* requires that the service to be regulated (and its price) must be easily defined and measured consistently over time.
9. Significantly, proposed Rule 1220-4-2.55(2)(d) fails these basic criteria. Not only is the "long distance" market competitive today -- and, therefore, there is no *need* for a net revenue cap -- the "market" itself is poised for a transformation so fundamental that the very *structure* assumed by the rule is unlikely to exist in the

future. Long distance competition is robust today and changing in ways that make it impossible to apply "price cap" regulation even if it were not. Rather than attempting to retrofit such regulation for a future where it is unneeded and unworkable, it is time to simply eliminate this last vestige of the industry's regulated past.

II. Continued Price Regulation of "Long Distance" Is Not Necessary

10. As a starting observation, it is important to realize that proposed Rule 1220-4-2.55(2)(d) extends price cap regulation far beyond its traditional role. Price cap regulation is fundamentally intended to apply in markets that are *becoming* competitive, but where one market participant retains a significant degree of market power. As a transitional measure, price cap regulation balances the need to protect consumers from the dominant provider's market position, while still offering the provider an ability to respond to growing competition.
11. In contrast, the focus of proposed Rule 1220-4-2.55(2)(d) is to regulate an *entire* industry, not a single provider in recognition of its unique market power. Such an approach makes sense, however, only if *every* market participant enjoys the market power to keep prices from falling to competitive levels. While it is difficult to imagine this condition existing in *any* market, it most certainly does not characterize the degree of competition in the long distance market today.
12. Even a cursory survey of the long distance market shows that it is highly competitive, with a wide variety of marketing channels that focus on customers of virtually every calling pattern. Because there appears to be little disagreement concerning the options available to business customers, I focus my discussion on the residential marketplace.¹ Over the past decade, carriers have introduced a variety of products that have made lower rates more broadly available to a wider selection of residential customers, including consumers with very low calling volumes.
13. For instance, one of the fastest growing segments of the long distance industry is the provision of "dial around" services (i.e., those services that the consumer originates by dialing 10-10-XXX). One of the most significant, yet frequently overlooked, characteristics of this new marketing channel is that it represents competition for consumers even if they only make a single long distance call in a

¹ The conventional view that business customers are the principal focus of competitive activity (and, therefore, the principal beneficiaries of the lowest prices) is something of an industry myth. For instance, when the FCC instituted Presubscribed Interexchange Carrier Charges (PICCs), the overall effect was to increase the rates paid by small and medium size business customers. Further, a number of discounted calling plans (for instance, MCI's 5¢ Sundays) are either specifically designed for, or restricted to, residential customers.

month, a year, or their life. Competition in the long distance market is now so intense that carriers advertise heavily for your very *next* call, even if it is the *only* call you will ever make.

14. The remarkable success of "dial around" service can be seen in the emergence of two trends among the nationally branded carriers.² The first is that these carriers (MCI and AT&T, in particular) themselves market dial-around products that stand alone from their national brand. For instance, MCIWorldcom's flagship dial-around service is marketed generically as 10-10-220, while AT&T markets its 10-10-345 service. Low volume users can save on each individual call while continuing to use the same quality networks that these national carriers operate.
15. The second indication of the success of dial around marketing is the emergence of "monthly minimum charges" in the rate structures of the more traditional presubscribed (i.e., 1+) services. In part because FCC access charge rules now impose flat charges on each presubscribed line³ -- and because dial around marketing means that a presubscribed carrier may not, in fact, be the customer's "preferred" interexchange carrier -- flat-rate charges have been instituted to recover unavoidable flat-rate expenses of serving a customer account. These charges should not be interpreted as a sign that low volume users are not benefiting from competition, however, because at least one of the causes (i.e., dial around marketing) is competitively benefiting all users, including low volume customers. Ironically, it is because such consumers have access to lower usage prices that is responsible (in part) for the introduction of minimum charges.
16. Low volume users are also heavily marketed to through other non-traditional channels such as the Internet. One example is TALK.com, the wholesale provider of long distance service that is marketed under the AOL, Prodigy and other Internet labels.⁴ TALK.Com has over 1.6 million subscribers and is growing at an annualized rate of 60%. Significantly, 80% of TALK.com's customers spend

² Evaluating the level of long distance competition in the residential marketplace requires a broader perspective than looking at the standard offerings of the three "nationally branded" carriers (i.e., AT&T, MCIWorldCom and Sprint). Residential consumers have a far wider range of choices than this narrow perspective would suggest. Services offered by carriers other than the "national brands" now account for 20% of the industry's revenues (Source: Long Distance Market Shares, 4th Quarter 1998, Industry Analysis Division, Federal Communications Commission).

³ These charges are referred to as the Presubscribed Interexchange Carrier Charge, or PICC.

⁴ Although TALK.com's services are marketed using the Internet, the services themselves are provided over the public network (i.e., the services are not Internet Telephony). Statistics on TALK.com are reproduced from the presentation of George Vinal, SVP of Business Development, TALK.com to the Fall Business Conference of the Competitive Telecommunications Association, October 4, 1999 (Phoenix, AZ).

only \$10.00 a month on long distance service. Low rates are simply not reserved for high volume users.⁵

17. The fall of long distance service from luxury to commodity is now so complete that not only are *low* prices attainable, but that *zero* prices can be paid if savings are that critical to the consumer. For instance, one entrant (Broadpoint) now offers an advertiser-subsidized service called FreeWay.sm Subscribers to this service dial an 800 number and listen to advertisements to earn free calling.⁶
18. Certainly, the wide (and growing) availability of discount calling plans does not mean that every consumer *chooses* the lowest rate available to it. The degree of competition should be judged, however, by the selection and availability of alternatives, not by whether all consumers have chosen the lowest price they can. This is not a market where lower rates are hard to find, available to few, or which require great effort to make the most of. Telecommunications advertising floods the radio and television, newspapers, magazines, and direct mail to consumers homes, constantly encouraging customers to change carriers, calling plans and dialing behavior.
19. Nevertheless, some consumers continue to subscribe to basic rate plans, or pay rates that are higher than they could otherwise pay. There should be nothing surprising about this. It is simply a myth that all economic decisions -- from the purchase of soap to the choice of a new car -- are made with mathematical precision and perfect knowledge. The fact that some consumers have chosen discounted services, while others have not, tells us more about the relative importance of telecommunication services in the family budget than about the competitiveness of the long distance industry.
20. All consumers make sub-optimal purchasing decisions, at least for some products. Such decisions do not imply that they are victims of less-than-perfectly competitive markets or had no choices, however, only that they may have exercised their choices unwisely (at least from the perspective of a trained economist).⁷ But we shouldn't surrender common-sense reasoning so quickly --

⁵ Prepaid calling cards are another example of marketing to low volume users. Prepaid calling cards are being distributed and sold in virtually every retail outlet-- from the corner convenience gasoline station to the giant discount department store chains. These prepaid cards offer the low volume user the opportunity to purchase discounted long distance in increments as low as five minutes at per minute rates comparable to high volume long distance plans.

⁶ Typically, for each 15 second advertisement, the subscriber is given 2 minutes of free long distance calling.

⁷ I would note that some consumers *willingly* pay more for some services (or to some carriers) because of an individual perception of higher quality or better service. This does not prove that a market is not competitive, rather it confirms what everyone knows already -- different people care about different things.

people will always seek out lower prices for any product where they decide it is important to do so.⁸ And those willing to make any effort to do so for long distance service will find a wide variety of services and prices that can accommodate any budget, with aggressive competition for large and small users alike.

III. Continued Price Regulation of “Long Distance” Is Not Viable

21. The prior discussion demonstrates that competition is already an effective regulator of the prices available to consumers of long distance services. There is no need to superimpose on this market an algebraic formula such as contemplated by proposed Rule 1220-4-2.55(2)(d). Equally important, however, is understanding that the very structure of proposed Rule 1220-4-2.55(2)(d) is an anachronism based entirely on where long distance service *has been*, without reference to where it *is going*.
22. The basic design of the “net revenue cap” proposed by Rule 1220-4-2.55(2)(d) is that the Authority can reasonably measure and regulate the “average revenue per minute” of “long distance service” purchased by “residential customers.” Wholly aside from the argument that such regulation is unneeded (see above) is a larger point that this calculation accepts three critical assumptions that are not likely to continue in the future. These assumptions are:
 - (a) That long distance service will continue to be designed and priced as it has in the past, with prices that vary by distance and duration;
 - (b) That long distance service will continue to be offered as a separately identifiable service, with distinct long distance revenues that can be measured and reported; and,
 - (c) That local exchange carriers (including entrants) will continue to offer distinct “residential” and “business” services so that “residential long distance revenues” can be determined.
23. These assumptions, however, reflect a patently static view of the long distance and local markets. Readily identifiable forces are gathering to radically transform this traditional vision. As I explain below, *even if* it were reasonable to continue

⁸ Economists would characterize this process as the consumer balancing “search costs” (i.e., the costs to collect and evaluate different choices) with expected benefits (i.e., how much savings is the effort likely to realize). By definition, since low volume users have little at stake in finding lower prices, one should expect that they would likely subscribe less frequently to discount calling plans. Nevertheless, as explained earlier, the advent of dial-around discount plans provide even the *lowest* volume user (i.e., the user that makes only a *single* call) an opportunity to pay lower prices.

to regulate “long distance” prices (and it is not), the long distance “market” that such an approach presupposes is on the verge of disappearance.

24. It is useful to begin first with the effect of technology on the very notion of “long distance.” The traditional pricing equation for long distance service – i.e., minute-of-use rates, increasing with distance, discounted by time-of-day – reflect the cost characteristics of a circuit-switched network. The circuit-switched network, however, is largely obsolete and will be replaced over time by a packet-based architecture.
25. Packet technology is notable for a number of reasons. First, packet technology views all communications as digital information that erases any distinction between data and voice. More importantly to this discussion, however, is the effect of packet technology on the cost of transmission. The nature of packet transmission is that each individual packet can be routed and delivered to a distant point over different paths and using different facilities. While a “long distance call” may begin and end as a continuous data stream, its intermediate routing is defined dynamically by algorithms and real-time traffic patterns that vary constantly throughout the call.⁹
26. One effect of packet technology will be that the fundamental cost basis of traditional pricing – in particular, duration and distance – will become irrelevant. Furthermore, the scale efficiency of the technology overlapped with terabit per second (and ever increasing) fiber systems, will drive costs by *any* measure down to levels where usage-based pricing may not even be administratively sustainable. As the Economist predicted:

Relentless technological change is driving down many of the elements in the cost of a telephone call. Already, the cost of carrying an additional call is often so tiny that it might as well be free. More significant, carrying a call from London to New York costs virtually the same as carrying it from one house to the next.

The death of distance as a determinant of the cost of communications will probably be the single most important economic force shaping society in the first half of the next century.¹⁰

⁹ The standardization of data networking on the Internet Protocol (IP) has given rise to an entirely new architecture where “switching” is no longer relevant. In advanced IP networks that support both voice and multimedia communications, routing is determined by distributed call control servers generally referred to as “gateway controllers”, or “soft switches.”

¹⁰ *The Death of Distance*, The Economist, September 30, 1995, Telecommunications Survey, page 5.

27. Obviously, any rule intended to regulate the price of “long distance service” presupposes that the term “long distance service” retains meaning. Yet, technology is erasing the significance of distance on cost, a fact that will ultimately erase the significance of distance in price. This pricing trend is already observed in the cellular market, where postalized pricing is becoming the norm.
28. There are other market changes on the horizon that will also dramatically alter the manner in which “long distance” service is offered and priced. The most significant trend will be the emergence of “bundled” services that combine local and long distance service into a single product. One goal of the Telecommunications Act of 1996 is to create a robustly competitive local market so that all carriers could offer *seamless* voice services, without regard to traditional exchange, state or LATA boundaries. Certainly, this vision has been delayed by factors not relevant to this affidavit;¹¹ nevertheless, once local competition becomes a reality, “long distance” service will disappear as a separate product for many consumers.
29. For instance, in New York, Z-Tel now offers residential subscribers a unique communications “suite” that combines local, long distance and a WEB-based “communications center” that provides each subscriber a single electronic page to manage voice and fax messages, along with a number of other features. The baseline Z-Tel package is offered for a flat fee of \$49.99 per month, including 200 minutes of long distance calling (intrastate and interstate).¹² Under this pricing/service approach, there is no separate charge that can be attributed to the long distance component of the consolidated package.
30. Finally, proposed Rule 1220-4-2.55(2)(d) assumes that not only will identifiable “long distance revenues” exist in the future, the proposed rule assumes that these revenues can be separately tracked by whether the local exchange carrier is providing “residential” or “business” service.¹³ This aspect of the proposed rule

¹¹ Although this Affidavit is not intended to address the factors that have thus far prevented local competition from developing in Tennessee (or elsewhere in the BellSouth region), it is appropriate to make clear that the problems cannot be found in any lack of *desire* to compete by new entrants. What denies consumers the benefits of seamless (i.e., products that transcend local and long distance boundaries) competition is that substantial barriers to local competition remain despite the best intentions of the Telecommunications Act and this Authority.

¹² Although Z-Tel uses the Internet for its subscribers to access their Web-based “personal communications center” to manage their communication services, the actual calling services are provided over the traditional network using a combination of long distance networks and UNE-P for its local offering.

¹³ Rule 1220-4-2-.55(2)(d)1(i) states:

The Residential Services category shall include all services for which the majority of customers are classified as residential customers by the local exchange carrier for application of local service rates.

assumes, in effect, that a *competitive* local market will continue to honor this form of discrimination.¹⁴ With the exception of the Yellow Pages Listing that frequently accompanies a “business designation,” however, there is no reason to expect that a business/residential distinction would withstand a fully competitive local environment. With no cost-justification for a higher rate for businesses – and, in the absence of a monopoly, no effective mechanism to enforce an unjustified tariff label¹⁵ – the Authority should expect that market forces will ultimately erode the distinction.¹⁶

IV. Conclusion

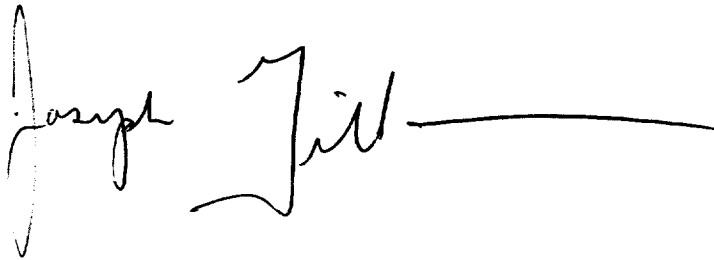
31. The fundamental conclusions of my Affidavit are two-fold. First, the long distance market is already competitive, with the market acting as an effective regulator of the prices and choices available to Tennessee consumers. This conclusion is as valid for low volume users as it is for customers with other calling patterns – in fact, discounted prices are available to consumers even if they make only a single long distance call in their lives.
32. Second, the dynamic changes affecting the telecommunications industry more generally will make it impossible to continue to regulate “long distance” as a separate service, even if it were appropriate to do so (which it is not). What is today *long* distance service is becoming nothing more than the *longer* distance component of a comprehensive service package. *Any* regulatory scheme predicated on a discreet product market for “long distance” service -- offered under pricing plans that are easily predicted and comparable -- is doomed to failure.
33. The Authority should reject proposed Rule 1220-4-2.55(2)(d) and rely on competition to determine the prices and service choices of Tennessee consumers.

¹⁴ Alternatively, the proposed Rule assumes that local competition fails and that, therefore, the incumbent’s traditional discrimination perseveres.

¹⁵ With competition, a business customer would simply move to a carrier that does not discriminate against it through higher rates.

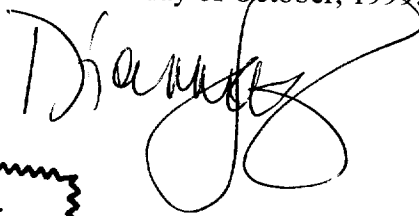
¹⁶ This process has already begun in the competitive industry with carriers frequently referring to the “SOHO” market (i.e., small office, home office) as a single target group.

I hereby swear that the foregoing is true and correct to the best of my information and belief.

A handwritten signature in black ink, appearing to read "Joseph Gillan", followed by a long horizontal line.

JOSEPH GILLAN

Subscribed and sworn to before me this 12th day of October, 1999.

A handwritten signature in black ink, appearing to read "Dianne Jacquin", written over the notary seal.